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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN FRANCISCO DIVISION**
11

12 TIMOTHY SCOTT CAMPBELL, KERIE
CAMPBELL, MARCUS KRYSHKA, MARC
13 MCKINNIE, MICHAEL SIEGEL,
AMERICAN CIVIL LIBERTIES UNION OF
14 NORTHERN CALIFORNIA,

15 Plaintiffs,

16 v.

17 CITY OF OAKLAND, INTERIM CHIEF OF
POLICE HOWARD JORDAN,

18 Defendants.
19

Case No. C11-05498 RS

~~PROPOSED~~
STIPULATED PROTECTIVE ORDER

1 Plaintiffs TIMOTHY SCOTT CAMPBELL, KERIE CAMPBELL, MARCUS KRYSHKA,
 2 MARC MCKINNIE, MICHAEL SIEGEL, AMERICAN CIVIL LIBERTIES UNION OF
 3 NORTHERN CALIFORNIA, by and through their attorneys Rachel Lederman, et al., and
 4 Defendants CITY OF OAKLAND, INTERIM CHIEF OF POLICE HOWARD JORDAN,
 5 (“Defendants”), by and through their attorneys, the OFFICE OF THE CITY ATTORNEY OF
 6 OAKLAND, hereby stipulate to the following protective order:

7 1. DEFINITIONS

8 1.1 Party: any party to this action, including all of its officers, directors,
 9 employees, consultants, retained experts, and outside counsel (and their support staff).

10 1.2 Disclosure or Discovery Material: all items or information, regardless of
 11 the medium or manner generated, stored, or maintained (including, among other things;

12 1.3 “Confidential” Information or Items: Information (regardless of how
 13 generated, stored or maintained) or tangible things qualify for protection under standards developed
 14 under F.R.Civ.P. 26(c). This material includes:

15 a) Information from personnel files of any sworn member of the Oakland Police
 16 Department.

17 b) Information from Internal Affairs files pertaining to any sworn member of the
 18 Oakland Police Department.

19 1.4 “Highly Confidential-Attorneys’ Eyes Only” Information or Items:
 20 Extremely sensitive “Confidential Information or Items” whose disclosure to another Party or non-
 21 party would create a substantial risk of serious injury that could not be avoided by less restrictive
 22 means.

23 This material includes:

24 a) Information from medical and/or psycho-therapeutic records of any party to this
 25 action.

26

1.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

1.6 Producing Party: a Party or non-party that produces Disclosure or Discovery Material in this action.

1.7 Designating Party: a Party or non-party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential-Attorneys Eyes Only.”

1.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential-Attorneys’ Eyes Only.”

1.9 Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

1.10 House Counsel: attorneys who are employees of a Party.

1.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their support staffs).

1.12 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in this action and who is not a past or a current employee of a Party and who, at the time of retention, is not anticipated to become an employee of a Party. This definition includes a professional jury or trial consultant retained in connection with this litigation.

1.13 Professional Vendors: person or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

2. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also any information copied or extracted therefrom, as

1 well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or
 2 presentations by parties or counsel to or in court or in other settings that might reveal Protected
 3 Material.

4 3. DURATION

5 Even after the termination of this litigation, the confidentiality obligations
 6 imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or
 7 court order otherwise directs.

8 4. DESIGNATING PROTECTED MATERIAL

9 4.1 F.R.Civ. P. 26(c). The information sought to be protected must be
 10 properly qualified for protection under F.R.Civ. P. 26(c). Counsel shall not designate any discovery
 11 material "CONFIDENTIAL" without first making a good faith determination that protection is
 12 warranted.

13 4.2 Manner and Timing of Designations. Except as otherwise provided in
 14 this Order (see, e.g., second paragraph of section 4.2(a), below), or as otherwise stipulated or
 15 ordered, material that qualified for protection under the Order must be clearly so designated before
 16 the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (apart from transcripts of
 19 depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
 20 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL-ATTORNEYS' EYES ONLY" at the top of
 21 each page that contains protected material.

22 A Party or non-party that makes original documents or materials available for
 23 inspection need not designate them for protection until after the inspecting Party has indicated
 24 which material it would like copied and produced. During the inspection and before the
 25 designation, all of the material made available for inspection shall be deemed "HIGHLY
 26 CONFIDENTIAL—ATTORNEYS' EYES ONLY." After the inspecting Party has identified the

documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order, then, before producing the specified documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL-ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non-party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL—ATTORNEYS’ ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, the Party or non-party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding ins concluded) a right to have up to 20 days to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

Transcript pages containing Protected Material must be separately bound by the court reporter, who must affix to the top of each such page the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” as instructed by the Party or non-party offering or sponsoring the witness or presenting the testimony.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or

1 “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY.”

2 4.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
3 failure to designate qualified information or items as “Confidential” or “Highly Confidential—
4 Attorneys’ Eyes Only” does not, standing alone, waive the Designating Party’s right to secure
5 protection under this Order for such material. If material is appropriately designated as
6 “Confidential” or “Highly Confidential—Attorneys’ Eyes Only” after the material was initially
7 produced, the Receiving Party, on timely notification of the designation, must make reasonable
8 efforts to assure that the material is treated in accordance with the provisions of the Order. If
9 Receiving Party serves a written objection to the propriety of a “Confidential” or “Highly
10 Confidential” designation under this section, the parties must make reasonable attempts to meet and
11 confer to resolve the disputed designation(s). If such attempts fail, the Designating Party must
12 move the Court for a protective order within thirty (30) days of the conclusion of the meet and
13 confer discussions. If the Designating Party does not so move, the Receiving Party may treat the
14 subject “Confidential” or “Highly confidential” designation(s) as having been waived.

15 5. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 5.1 Timing of Challenges. Unless a proper challenge to a Designating
17 Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness,
18 unnecessary economic burden, or a later significant disruption or delay of the litigation, a Party does
19 not waive its right to challenge a confidentiality designation by electing not to mount a challenge
20 promptly after the original designation is disclosed.

21 5.2 Meet and Confer. A Party that elects to initiate a challenge to a
22 Designating Party’s confidentiality designation must do so in good faith and must begin the process
23 by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient)
24 with counsel for the Designating Party. In conferring, the challenging Party must explain the basis
25 for its belief that the confidentiality designation was not proper and must give the Designating Party
26 an opportunity to review the designated material, to reconsider the circumstances, and, if no change

1 in designation is offered, to explain the basis for the chose designation. A challenging Party may
 2 proceed to the next stage of the challenge process only if it has engaged in this meet and confer
 3 process first.

4 5.3 Judicial Intervention. A Party that elects to press a challenge to a
 5 confidentiality designation after considering the justification offered by the Designating Party may
 6 file and serve a motion under Civil Rule 7 (and in compliance with Civil Local Rule 79-5, if
 7 applicable) that identifies the challenged material and sets forth in detail the basis for the challenge.
 8 Each such motion must be accompanied by a competent declaration that affirms that the movant has
 9 complied with the meet and confer requirements imposed in the preceding paragraph and that sets
 10 forth with specificity the justification for the confidentiality designation that was given by the
 11 Designating Party in the meet and confer dialogue.

12 The burden of persuasion in any such challenge proceeding shall be on the
 13 Designating Party. Until the court rules on the challenge, all parties shall continue to afford the
 14 material in question the level of protection to which it is entitled under the Producing Party's
 15 designation.

16 6. ACCESS TO AND USE OF PROTECTED MATERIAL

17 6.1 Basic Principles. A Receiving Party may use Protected Material that is
 18 disclosed or produced by another Party or by a non-party in connection with this case only for
 19 prosecuting, defending, or attempting to settle this litigation. Such Protected material may be
 20 disclosed only to the categories of persons and under the conditions described in this Order. When
 21 the litigation has terminated, a Receiving Party must comply with the provisions of section 10,
 22 below (FINAL DISPOSITION).

23 Protected Material must be stored and maintained by a Receiving Party at a
 24 location and in a secure manner that ensures that access is limited to the persons authorized under
 25 this Order.

26 6.2 Disclosure of "CONFIDENTIAL: Information or Items. Unless

1 otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party
 2 may disclose any information or item designated CONFIDENTIAL only to:

3 (a) employees of the Receiving Party to whom disclosure is reasonably
 4 necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order"
 5 (Exhibit A);

6 (b) experts (as defined in this Order) of the Receiving Party to whom
 7 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be
 8 Bound by Protective Order" (Exhibit A);

9 (c) the Court and its personnel;

10 (d) court reporters, their staffs, and professional vendors to whom disclosure
 11 is reasonably necessary for this litigation;

12 (e) during their deposition, witnesses in the action to whom disclosure is
 13 reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order"
 14 (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal
 15 Protected Material must be separately bound by the court reporter and may not be disclosed to
 16 anyone except as permitted under this Stipulated Protective Order.

17 (f) the author of the document or the original source of the information.

18 6.3 Disclosure of "HIGHLY CONFIDENTIAL—ATTORNEYS' EYES
 19 ONLY" Information or Items. Unless otherwise ordered by the court or permitted in writing by
 20 the Designating Party, Receiving Party may disclose any information or item designated "HIGHLY
 21 CONFIDENTIAL—ATTORNEYS' EYES ONLY" only to:

22 (a) Experts (as defined in this Order) (1) to whom disclosure is
 23 reasonably necessary for this litigation, who have signed the "Agreement to Be Bound by Protective
 24 Order" (Exhibit A);

25 (b) the Court and its personnel;

26 (c) court reporters and their staffs; and

1 (d) the author of the document or the original source of the information.

2 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED

3 PRODUCED IN OTHER LITIGATION

4 If a Receiving Party is served with a subpoena or an order issued in
5 other litigation that would compel disclosure of any information or items designated in this action
6 as “CONFIDENTIAL” or HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” the
7 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately
8 and in no event more than three court days after receiving the subpoena or order. Such notification
9 must include a copy of the subpoena or court order.

10 The Receiving Party also must immediately inform in writing the Party who
11 caused the subpoena or order to issue in the other litigation that some or all the material covered by
12 the subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must
13 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that
14 caused the subpoena or order to issue.

15 The purpose of imposing these duties is to alert the interested parties to the
16 existence of this Protective Order and to afford the Designation Party in this case an opportunity to
17 try to protect its confidentiality interests in the court from which the subpoena or order issued. The
18 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its
19 confidential material—and nothing in these provisions should be construed as authorizing or
20 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

21 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

22 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
23 Protected Material to any person or in any circumstance not authorized under this Stipulated
24 Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party
25 of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected
26 Material, (c) inform the person or persons to whom unauthorized disclosures were made of all of

1 the terms of this Order, and (d) request such person or persons to execute the “Acknowledgment
2 and Agreement to Be Bound” that is attached hereto as Exhibit A.

3 9. FILING PROTECTED MATERIAL. Without written permission from the
4 Designating Party or a court order secured after appropriate notice to all interested persons, a Party
5 may not file in the public record in this action any Protected material. A Party that seeks to file
6 under seal any Protected Material must comply with Civil Local Rule 79-5. In addition to placing
7 the documents in a sealed envelope with instructions that the envelope is not to be opened absent
8 further order of the court, the envelope should be labeled to identify title of the case, the case
9 number, and the title of the document.

10 10. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by
11 the Producing Party, within sixty days after the final termination of this action, each Receiving Party
12 must return all Protected Material to the Producing Party, as used in this subdivision, “all Protected
13 Material” includes all copies, abstracts compilations, summaries or any other form of reproducing
14 or capturing any of the Protected Material. With permission in writing from the Designating Party,
15 the Receiving Party may destroy some or all of the Protected Material instead of returning it.
16 Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written
17 certification to the Producing Party (and, if not the same person or entity, to the Designating Party)
18 by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material
19 that was returned or destroyed and that affirms that the Receiving Party has not retained any copies,
20 abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected
21 Material.

22 11. MISCELLANEOUS

23 Right to Further Relief. Nothing in this Order abridges the right of any
24 person to seek its modification by the Court in the future.

25 12. JURISDICTION. The Court shall retain jurisdiction over any matter
26 covered by this Stipulation and Order for 24 months after the final termination of this action.

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2
3 **THE PARTIES HEREBY STIPULATE TO THE TERMS OF THE PROTECTIVE**
4 **ORDER AS SET FORTH ABOVE.**

5
6 DATED: November 26, 2012

RACHEL LEDERMAN & ALEXSIS C. BEACH

7 By: /S/
8 Attorneys for Plaintiffs
DANIEL SPALDING, et al.

9 DATED: November 26, 2012

OFFICE OF THE CITY ATTORNEY

10
11 By: /S/
12 Attorneys for Defendants
CITY OF OAKLAND, et al.

13
14 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

15 DATED: 11/28/12


16
17 
18 THELTON E. HENDERSON Richard Seeborg
19 United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that was issued by the
 United States Court for the Northern District of California on _____ [date] in
 the case of Daniel Spalding et al. v. City of Oakland, et al., Case No. C11-02867 TEH, I agree to
 comply with and be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and punishment in the nature
 of contempt. I solemnly promise that I will not disclose in any manner any information or item that
 is subject to this Stipulated Protective Order to any person or entity except in strict compliance with
 the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone
 number] as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]